

**STATEMENT OF MODIFICATION - APPLICATION TO MODIFY CONSENT UNDER  
S4.55 (2) OF THE ENVIRONMENTAL PLANNING & ASSESMENT ACT 1979**

**ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE**

**AT**

**5 SURFVIEW ROAD, MONA VALE**

**FOR**

**BELINDA & LEX PEDERSEN**



**Prepared  
August 2023**

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## 1.0 Introduction

This Statement of Modification has been prepared to assist Council in the consideration of an application pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979 (**EP&A Act**) to modify Development Consent DA2019/1421, which approved alterations and additions to an existing dwelling at **5 Surfview Road, Mona Vale**.

The proposed modifications are detailed in the accompanying architectural plans prepared by MHDP Architects, (Job No. 2222, Revision B, dated October 2022).

The proposed modifications are discussed in further detail in this submission

## 2.0 Background

Development Application DA2019/1421 for *“Alterations and additions to an existing dwelling”* was approved by Council in accordance with the Notice of Determination dated 26 March 2020.

The approved alterations and additions to the dwelling have not commenced, with the Consent to lapse 26 March 2025.

## 3.0 Proposed Modifications

The application involves changes to the form of the approved development, which are detailed in the modified architectural plans prepared by MHDP Architects, (Job No. 2222, Revision B, dated 17 August 2023).

Specifically, the proposed modifications include:

### Basement Floor

- Garage extension and carport to be removed. Garage door to remain in the same alignment as existing garage door. This results in a large reduction in bulk and scale from approved DA2019/1421 and especially alleviates any impact to the heritage-listed Norfolk Island Pine on the neighbouring property.
- The undercroft of existing pool and pool deck to be levelled to allow for additional garage spaces. These two garages will not result in any additional bulk and scale as they are within existing building footprint and site setbacks.
- Driveway to remain largely as per existing condition, with minor amendments to additional garages. Car turntable to be added to ensure site entry/exit is always in a forward motion.

### Ground Floor

- Alterations and additions to existing ground floor level, similar to approved DA2019/1421, however all works to dwelling are within existing ground floor footprint. There is an increase to internal floor area to southwestern corner, however is within the zone of the existing pool deck. This results in a large reduction in bulk and scale from the approved DA2019/1421, particularly to the northern side of the site, as the

previously approved gym, raised courtyard, study, bathroom and family room, have been condensed into the existing ground floor footprint.

- Alterations to existing pool terrace to remain similar to approved DA2019/1421. All works are within existing building footprint.
- Existing pool to be modified. Proposed size of pool has been reduced from approved DA2019/1421.
- Guest/cabana to be added to western side of pool. There is an extension of internal floor area, however is mostly within the zone of the existing pool deck, building footprint and site setbacks.

### **First Floor**

- Alterations and additions to the existing first floor level, similar to approved DA2019/1421. Most works to the dwelling are within the existing ground floor footprint. There is an increase to internal floor area as we propose to infill part of the existing balcony to the eastern side, however there is no increase in bulk and scale as it is in keeping with the approved DA2019/1421. There is an additional minor increase to internal area at the stair void, however this is central to the site and will not impact neighbours.
- Due to the removal of the previously approved addition to the ground floor, the roof relating to these areas have been removed. This results in a large reduction in bulk and scale from the approved DA2019/1421.
- There will be additional roof area for the Guest/Cabana, Entry and Pool Terrace.

### **Roof Plan**

- The roof is also proposed to be replaced with a flat, metal roof, similar to the approved DA2019/1421. There is a minor increase to the roof extent, however is central to the site and will not impact neighbours. There is also a reduction of roof area to the south western corner of the roof. The proposed flat roof is in keeping with the approved DA and assists greatly with minimising the visual bulk of the development.

The development indices for the site remain compatible with that originally approved, with a reduction in building bulk being accompanied by an increase in landscaped area from 26.2% to 34.4%, as follows:

<b>Site Area</b>	803m <sup>2</sup>
<b>Required Landscaped Area</b>	60% or 481.8m <sup>2</sup>
<b>Proposed Landscaped Area</b>	34.4% or 278.6m <sup>2</sup> (8.2% increase from approved DA2019/1421 – 26.2% or 211m <sup>2</sup> )

## **4.0 Zoning and Development Controls**

### **4.1 State Environmental Planning Policy (Resilience and Hazards) 2021**

In the time since DA2019/1421 was approved, State Environmental planning Policy No. 55 – Remediation of Land has been revoked and replaced by the provisions of Chapter 4 of SEPP (Resilience and Hazards).

Chapter 4 of SEPP (Resilience and Hazards) applies to all land and aims to provide for a state-wide planning approach to the remediation of contaminated land.

Clause 4.6(1)(a) of this policy requires the consent authority to consider whether land is contaminated. Given the history of residential use of the land, the site is not considered to be subject to contamination and further investigation is not required at this stage.

Overall, the proposed modified development remains consistent with the relevant provisions of SEPP (Resilience and Hazards).

### **4.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

The proposal continues to meet the relevant water, thermal and energy standards required by SEPP BASIX. An amended BASIX certificate has been submitted with the subject modification application.

### **4.3 Pittwater Local Environmental Plan 2014**

#### **Clause 2.2 Zone objectives and Land Use Table**

The site is zoned C4 Environmental Living under the provisions of the PLEP 2014. The proposed modified development remains permissible with consent and consistent with the objectives of the C4 Environmental Living zone.



**Fig 1: Extract of Zoning Map of PLEP 2014**

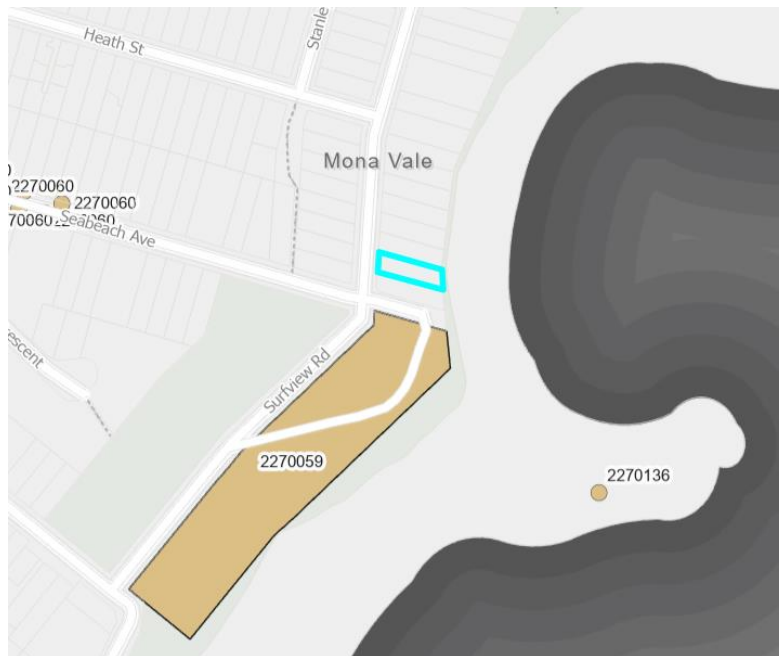
**Clause 4.3 Height of Buildings** provides controls relating to the height of buildings.

The maximum height of the development, as approved in DA2019/1421, remains unchanged.

The proposed modifications reach a maximum height of approximately 7m and are maintained well below the 8.5m maximum prescribed by this control.

**Clause 5.10 – Heritage conservation**

The site is not listed as a heritage item, nor is it within a conservation area. However, the site is noted as being within the vicinity of the heritage-listed Norfolk Island Pines along Surfview Road (Item No. 2270059).



**Fig 2: Extract from Pittwater Council Heritage Map**

The proposed development will see a reduction in the overall ridge height of the dwelling, and the existing plantings within the front setback are to be maintained. The proposed alterations and additions are therefore not considered to have any impact on the significance of the heritage item.

**Clause 7.1** relates to acid sulfate soils. The site has been identified within the Acid Sulfate Soils Map as being within the Class 4 Acid Sulfate Soils Areas. The proposal will not see any substantial disturbance of the site and as such, it is not anticipated that any acid sulfate soils are disturbed.

**Clause 7.2** relates to earthworks. The proposal will require some minor excavation of the site to accommodate the new works. The works will be carried out in accordance with the recommendations of the structural engineer.

**Clause 7.5** relates to coastal risk planning.

The original determination was accompanied by a Coastline Risk Management Report prepared by Horton Coastal Engineering, dated 20 November 2019.

The report concludes the following:

*The proposed development would be at an acceptably low risk of damage (over a reasonable 60 year design life) from erosion/recession if founded as outlined in Section 6.2, and from coastal inundation and wave runup if the measures outlined in Section 7 are adopted.*

*The proposed development satisfies the requirements of State Environmental Planning Policy (Coastal Management) 2018 (Clauses 13, 14 and 15), Section 9(2) of the Coastal Management Act 2016, Clause 7.5 of Pittwater Local Environmental Plan 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk Management Policy for Development in Pittwater for the matters considered herein.*

Even that the proposed works are largely within the approved disturbed footprint with no further significant site disturbance, the modified proposal intends to rely on the previous report and will observe the recommendations of the Consulting Coastal Engineer as contained within the report and therefore the proposal will satisfy the provisions of this clause.

#### **Clause 7.8 – Limited development on foreshore area**

The site is noted as being affected by Council's Foreshore Building Line Map.

The foreshore area is defined as:

**foreshore area** means the land between the foreshore building line and the mean high water mark of the nearest natural waterbody shown on the Foreshore Building Line Map.

Clause 7.8 notes as its Objectives:

(1) *The objectives of this clause are as follows:*

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,*
- (b) to ensure continuous public access along the foreshore area and to the waterway.*

Clause 7.8 (2) notes that development consent can only be granted for certain development within the foreshore area, including:

*a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*

In this instance, the works involve alterations and additions to an existing dwelling, with the new works to stand clear of the foreshore area, with the exception of the uncovered rear terrace. The works will observe the briefly proved alignments and therefore the proposal relies on the previous Written Request under clause 4.6 of PLEP 2014.

The provisions of clause 4.6 of the Pittwater LEP 2014 do not apply to this modification application and it is appropriate to rely on the previous arguments for the positioning of the new works.



**Fig 3: Extract from Pittwater Council Foreshore Building Line Map**

Clause 7.8 (2) notes that development consent can only be granted for certain development within the foreshore area, including:

*a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*

In this instance, the works involve alterations and additions to an existing dwelling, with the new works to stand clear of the foreshore area, with the exception of the uncovered rear terrace. A Clause 4.6 submission has been prepared in support of the proposed variation.

### **7.10 Essential services**

This clause provides the following:

*Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:*

- 1. the supply of water,*
- 2. the supply of electricity,*
- 3. the disposal and management of sewage,*



4. *stormwater drainage or on-site conservation,*
5. *suitable vehicular access.*

The site will retain the normal services which are available for the existing dwelling.

There are no other clauses of PLEP 2014 that are considered to be relevant to the subject modification application.

#### **4.4 Pittwater 21 Development Control Plan**

Council's Pittwater 21 DCP and Section D9 Mona Vale Locality Statement provide a range of outcomes and controls which form the primary criteria control for development within the subject locality.

The provisions relevant to the proposed modifications are considered, as follows:

##### **C1.5 Visual privacy**

The controls seek to achieve the outcomes:

*Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)*

*A sense of territory and safety is provided for residents. (S)*

The provisions of clause C1.5 require areas of private open space, including swimming pools, and living rooms of adjoining properties to be protected from overlooking within 9m. The clause also requires elevated decks to comprise privacy screens, where necessary.

The modification application will see a reduction in the extent of the elevated terraces and living rooms which were previously over the extended garage and carport, reducing the visible bulk of the building and maintaining privacy and amenity for the neighbouring properties.

Further opportunities for landscaping through generous setbacks and additional soft landscaping provide increased visual privacy to and from neighbouring properties.

Accordingly, the proposal is considered to maintain privacy for occupants of the subject site and neighbouring properties.

##### **C1.6 Acoustic Privacy**

The controls seek to achieve the outcomes:

*Noise is substantially contained within each dwelling and noise from any communal or recreation areas are limited. (S)*

*Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or recreation areas (S)*

The required controls to achieve the outcomes are to ensure that noise sensitive living areas and bedrooms are located away from major noise sources.

Given the residential nature of the works, it is suggested that there will not be any significant change to the existing site conditions as a consequence of the proposed modifications.

### **C1.7 Private Open Space**

The controls seek to achieve the outcomes:

*Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)*

*Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)*

*Private open space receives sufficient solar access and privacy (En, S).*

The required controls to achieve the outcomes are to ensure that dwellings are provided with suitable private open space with an area and at a grade which will facilitate outdoor private recreation.

The modified proposal provides for improved private open space areas including, a terrace area adjacent to a new pool and directly accessible from internal living areas, while the terraces to the east of the dwelling are retained.

### **C 1.12 Waste and Recycling Facilities**

The controls seek to achieve the outcomes:

*Waste facilities are accessible and convenient, and integrate with the development. (En)*

*Waste facilities are located such that they do not adversely impact upon amenity of the land adjoining development or natural environment. (En, S)*

The required controls to achieve the outcomes are to ensure that adequate area remains for the storage of waste and recyclable materials.

The curtilage to the dwelling and garage will maintain adequate area for the on-site storage of waste and recyclables, with the waste removed by Council contractors via the household garbage service.

### **C 1.17 Swimming Pool Safety**

The controls seek to achieve the outcomes:

*The promotion of personal safety. (S)*

*Compliance with Swimming Pools Act 1992 and Regulations (En, S)*

The required controls to achieve the outcomes are to ensure that swimming pool fencing and warning notices (resuscitation chart) shall be manufactured, designed, constructed, located and maintained in accordance with the *Swimming Pools Act 1992*.

The proposed swimming pool and fence will observe the requirements of the *Swimming Pools Act 1992*.

A summary of the DCP controls for the **D9 Mona Vale Locality** is provided below:

### **D9.1 Character as Viewed From A Public Place**

The control seeks to achieve the outcomes:

*To achieve the desired future character of the Locality.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment.*

*To enhance the existing streetscapes and promote a scale and density that is in scale with the height of the natural environment.*

*The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)*

*High quality buildings designed and built for the natural context and any natural hazards. (En, S)*

*Buildings do not dominate the streetscape and are at human scale. Within residential areas, buildings give the appearance of being two-storey maximum. (S)*

*To preserve and enhance district and local views which reinforce and protect Pittwater's natural context.*

*To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures being a secondary component.*

*To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)*

The required controls to achieve the outcomes are to ensure that the building maintains compatibility with the locality through appropriate design relief including roof forms textures, materials, the arrangement of windows, modulation of wall and roof planes, spatial separation, landscaping etc.

The elevations provided with the modified plans demonstrate that the articulated form and modest extent of the proposed alterations and additions to the existing dwelling will be complementary in terms of bulk and scale to the existing surrounding development.

### **D9.3 Building Colours, Materials**

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality.*

*The development enhances the visual quality and identity of the streetscape. (S)*

*To provide attractive building facades which establish identity and contribute to the streetscape.*

*To ensure building colours and materials compliments and enhances the visual character and its location with the natural landscapes of Pittwater.*

*The colours and materials of the development harmonise with the natural environment. (En, S)*

*The visual prominence of the development is minimised. (S)*

*Damage to existing native vegetation and habitat is minimised. (En)*

The required controls to achieve the outcomes are to ensure that the external colours and materials shall be dark and earthy tones as indicated within the DCP.

It is considered that the modified development is appropriate as it is intended to utilise recessive tones and finishes to match the surrounding development.

#### **Clause D9.6 - Front building line**

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality.*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*The amenity of residential development adjoining a main road is maintained. (S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Vehicle manoeuvring in a forward direction is facilitated. (S)*

*To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

*To encourage attractive street frontages and improve pedestrian amenity.*

*To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment*

The modified design will observe the approved front setback to Surfview Road and with the reduction in the visual bulk of the building and particular the enclosed carparking with areas above which has been reduced, will present appropriate bulk and scale to the surrounding public areas.

#### **D9.7 Side and rear building line**

The controls seek to achieve the outcomes:

*To achieve the desired future character of the Locality. (S)*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties. (En, S)*

*Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)*

*Flexibility in the siting of buildings and access. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*To ensure a landscaped buffer between commercial and residential zones is established. (En, S)*

The relevant controls to achieve this outcome are to maintain a minimum side boundary setback of 2.5m for at least one side and min 1.0m setback for the other side, and min 6.5m from the rear boundary.

The modified proposal maintains the improve side setbacks for the dwelling and the guest cabana area, with a significant reduction in the extent of the works forward of the dwelling and over the approved garages and carports, which have been removed.

The proposal will maintain a suitable area of soft landscaping, and will not see the removal on any significant vegetation. The additional soft landscaping offer opportunities to screen the built form from surrounding properties, therefore reducing any perceived bulk and scale.

The minimum rear setback control does not apply in this case due to the foreshore building line taking precedence.

The proposal will not see any unreasonable impact on the views, amenity, privacy or solar access enjoyed by neighbouring properties.

The articulated form of the design and the varying side and rear setbacks are considered to be adequate in this instance and will achieve the outcomes of Clause D9.7.

#### **D9.9 Building Envelope**

The controls seek to achieve the outcomes:

*To achieve the desired future character of the Locality.*

*To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.*

*To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.*

*The bulk and scale of the built form is minimised. (En, S)*

*Equitable preservation of views and vistas to and/or from public/private places. (S)*

*To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

*(En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

The required controls to achieve the outcomes are to maintain the development within a height envelope which provides for a height of 3.5m with an angle projected at 45°.

As noted on the submitted building envelope diagram (SK08), the proposed alterations and additions will retained some minor breach of the building envelope have given the modified form of the proposal, the extent of the building envelope breach when compared to the existing building has been reduced.

The extensions to the northern and southern elevations to provide for additional space for existing bedrooms, as well as a new ensuite. These spaces are modest and the resulting non-compliance will not result in additional visual impact or give rise to adverse impacts on residential amenity by continue to provide for privacy and solar access. The building scale and built form remains commensurate with the surrounding locality and supported.

The modified design for the proposed alterations and additions will not encroach on the existing approved side and rear setbacks.

Suitable areas of soft landscaping are maintained, and no substantial vegetation is to be removed.

Accordingly, the modified proposal is considered to achieve the outcomes of this control and is therefore considered acceptable on merit.

#### **D9.11      Landscaped Area – Environmentally Sensitive Land**

The controls seek to achieve the outcomes:

*Achieve the desired future character of the Locality. (S) The bulk and scale of the built form is minimised. (En, S)*

*A reasonable level of amenity and solar access is provided and maintained. (En, S)*

*Vegetation is retained and enhanced to visually reduce the built form. (En)*

*Conservation of natural vegetation and biodiversity. (En)*

*Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)*

*To preserve and enhance the rural and bushland character of the area. (En, S)*

*Soft surface is maximised to provide for infiltration of water to the water table, minimise*

*runoff and assist with stormwater management. (En, S)*

The required controls to achieve the outcomes are to limit residential development in order to maintain a minimum landscaped area of 60% of the site area.

The modified proposal will provide for an increase in the approved landscaped area, from 211m<sup>2</sup> to 276.8m<sup>2</sup> or 26.2% to 34.4% of the site as soft landscaping, excluding Council's 6% allowance for impervious landscape treatments.

Including the 6% allowance for impervious landscape treatments, the landscaped area calculation provides for a total 40.4% or 324.7m<sup>2</sup>.

The proposal improves on the existing landscaping, while providing ample opportunity for plantings on the site. The proposal will not see the loss of any significant vegetation on site.

The modified proposal is accompanied by a Landscape Concept Plan prepared by MHDP Architects which provides the managed replanting of the perimeter of the new works.

The modified proposal will not see any unreasonable impact on the views, amenity, privacy or solar access enjoyed by neighbouring properties.

The proposal is considered to be adequate in this instance and will achieve the outcomes of Clause D9.7.

## **5.0 Matters for Consideration under Section 4.55 of the EP&A Act**

The EP&A Act provides for the modification of a consent under Section 4.55(2) which notes:

### *(2) Other modifications*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:*
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

Accordingly, for the Council to approve the S4.55 Modification Application, the Council must be satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.

### **Substantially the same**

To assist in the consideration of whether a development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, Justice Bignold established the following test in the *Moto Projects (No 2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 289 (**Moto**) where His Honours states:

*[54] The relevant satisfaction required by s96(2)(a) to be found to exist in order that the modification power be available involves an ultimate finding of fact based upon the primary facts found. I must be satisfied that the modified development is substantially the same as the originally approved development.*

*[55] The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.*

*[56] The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).*

In my opinion, in terms of both a qualitative and quantitative comparison, the modified development remains substantially the same as that which was originally approved by DA2019/1421.

The works continue to provide for the construction of alterations and additions to an existing dwelling house with no substantial change to the impact arising from the development compared to that already approved. The proposed modifications retain the general form, height, footprint and siting of the approved development.

When viewed from the public domain or from neighbouring properties, the development will largely present the same visual impact and appearance to that originally approved.

In my view, this application is substantially the same as the original application when considered in the context of the Bignold J determination in Moto.



## **6.0 Matters for Consideration under Section 4.15 of the EP&A Act**

Section 4.55(3) of the EP&A Act requires the consideration of such matters referred to in Section 4.15(1) of the EP&A Act. The matters are considered below.

### **6.1 The provisions of any environmental planning instrument**

The provisions of PLEP 2014, SEPP (Resilience and Hazards) and SEPP (BASIX) have been considered with respect to the modifications proposed.

### **6.2 Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and**

There are no draft instruments applying to the land.

### **6.3 Any development control plan**

The development has been designed to comply with the outcomes of P21 DCP. The proposed modifications do not result in any new or intensified areas of non-compliance with the provisions of this policy.

### **6.4 Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and**

No matters of relevance are raised in regard to the proposed development.

### **6.5 The regulations (to the extent that they prescribe matters for the purposes of this paragraph),**

No matters of relevance are raised in regard to the proposed development.

### **6.6 The likely impacts of that development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.**

The proposed modifications will not result in any unreasonable impacts upon the natural or built environment, or the amenity of adjoining properties, beyond that which is reasonably anticipated under the provisions of PLEP 2014 and P21 DCP.

It is considered that the resultant development is compatible with and will complement the residential character of the area.

### **6.7 The suitability of the site for the development**

The subject land is currently C4 Environmental Living under the provisions of PLEP 2014 and is considered suitable for the proposed development.

The subject site does not pose any significant constraint to the proposed development, noting that all hazards/affectations are appropriately managed.

## **6.8 Any submissions made in accordance with this Act or the regulations**

This is a matter for Council in the consideration of this proposal.

## **6.9 The public interest**

The proposal will not unreasonably impact upon the environment, the character of the locality or upon the amenity of adjoining properties and is therefore considered not to be contrary to the public interest.

## **7.0 Conclusion**

The test established in Moto requires both a quantitative and a qualitative assessment.

In terms of the quantitative extent of the changes to the originally approved development, the works which are the subject of the application are minor and do not inherently alter the nature and form of the alterations and additions to the dwelling as originally approved by Council.

The proposal also satisfies the qualitative assessment required by the Moto test. The modifications will result in a development which remains generally the same as that approved, for the same purpose and with no significant or adverse changes to the physical appearance of the approved development.

Consistent with the Court decision in Moto, Council can be satisfied that the development as modified will remain essentially or materially the same as the approved development, consistent with the provisions of section 4.55(2) of the EP&A Act.

Council's support of the proposed modifications is sought in this instance. Please contact me on 9999 4922 or 0412 448 088 should you wish to discuss these proposed amendments.

## **VAUGHAN MILLIGAN**

Town Planner

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